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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,679	04/15/2005	Winfried Bunsmann	BU-10PCT	8259

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/17/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/531,679	<b>Applicant(s)</b> BUNSMANN, WINFRIED	
	<b>Examiner</b> Paul A. Chenevert	<b>Art Unit</b> 3612	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 12 December 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/GLENN DAYOAN/  
Supervisory Patent Examiner, Art Unit 3612

/Paul A. Chenevert/  
Examiner, Art Unit 3612

Continuation of 10. Other (including any explanation in support of the above items):

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 11-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 18 and 19 have been corrected and are presently only objected to.

Claims 1, 2, 4-8 and 10 are subject to the present appeal.

Claims 1 and 2 (on appeal) and claims 17 and 18 (not on appeal) have been amended subsequent to the final rejection.

A substantially correct copy of appealed claims 1, 2, 4-8 and 10 appears on page 12 of the Appendix to the appellant's brief. The minor errors are as follows:

- a. Claim 1, line 5, "is a in" should read "is in a".
- b. Claim 1, line 11, "that at least includes a" should read "that includes at least a".
- c. Claim 1, line 12, "(8)" should read "(S)".
- d. Claim 10, line 4, "front" should be inserted before "roof part (5)".
- e. Claim 10, line 4, "it" should be changed to "the rear roof part".

#### NEW GROUNDS OF REJECTION DUE TO AMENDMENT AFTER FINAL:

As mentioned in the Advisor Action mailed 23SEP08, claims 1, 2, 4-8 and 10 remain rejected.

1. The inclusion of the the horizontal movement distance of claim 3 into claim 1 is not anticipated under 35 U.S.C. 102(b) over SPEAR, JR. et al. and was not rejected in the final Office action mailed 04MAR08. Therefore the question on appeal of whether claim 1 is anticipated under 35 U.S.C. 102(b) over SPEAR, JR. et al. is improper. However, claim 1 is still rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al.

SPEAR, JR. et al. discloses a convertible roof, however fails to specifically state the horizontal movement distance being between two and eight centimeters. It is, however, an obvious expedient to choose whatever distance is needed to disengage the front roof part from the window frame in order to pivot the roof to the open position.

2. The inclusion of the movable main bearing of claim 2 into claim 1 is not found in the SEEL et al. reference and was not rejected in the final Office action mailed 04MAR08. Therefore the question on appeal of whether claim 1 is anticipated under 35 U.S.C. 102(b) over SEEL et al. is improper. However, claim 1 is still rejected over SPEAR, JR. et al.

3. Because SEEL et al. no longer rejects the amended claim 1, then claim 10 is no longer rejected under 35 U.S.C. 103(a) as unpatentable over SEEL et al. in view of NEUBRAND et al. Therefore the question on appeal of whether claim 10 is unpatentable under 35 U.S.C. 103(a) over SEEL et al. in view of NEUBRAND et al. is improper. However, claim 10 is newly rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al. in view of NEUBRAND et al.

Both the SEEL et al. and the SPEAR, JR. et al. references disclose a convertible including a roof comprising several rigid roof parts, wherein the rear roof part extends at least between a belt line and a front roof part that is located in front of the rear roof part in the direction of travel and above a passenger compartment. However, both references fail to disclose that the rear roof part has a middle section, which in the closed state of the roof, lies between lateral main posts and encloses a rear window.

Therefore, claim 10 is newly rejected under 35 U.S.C. 103(a) as being unpatentable over SPEAR, JR. et al. in view of NEUBRAND et al.

NEUBRAND et al. disclose a rear roof part (126), a front roof part (120) located in front of the rear roof part, and wherein the rear roof part has a middle section (130,154,156), which, in the closed state of the roof, lies between lateral main posts (132,134) and encloses a rear window (130).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by SPEAR, JR. et al. with a middle section, as taught by NEUBRAND et al., in order to pivot the rear window separately from the rear pillars.

The amended Appeal Brief should include the following three 'Grounds of Rejection to be Reviewed on Appeal'

Whether claims 1, 2, 4, 5 and 8 are anticipated under 35 U.S.C. 103(a) over SPEAR, JR. et al.

Whether claims 6 and 7 are unpatentable under 35 U.S.C. 103(a) over SPEAR, JR. et al. in view of KINNANEN.

Whether claim 10 is unpatentable under 35 U.S.C. 103(a) over SPEAR, JR. et al. in view of NEUBRAND et al.